No. 7674

In The United States Circuit Court of Appeals

For the Ninth Circuit

WONG YING WING,

Appellant,

vs.

MARIE A. PROCTOR, United States Commissioner of Immigration, at the Port of Seattle,

Appellee.

Brief of Wong Ying Wing, Appellant

UPON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE WESTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

HONORABLE JOHN C. BOWEN, *Judge*

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STATEMENT OF FACTS

The appellant, Wong Ying Wing, was born as a son of Wong Hung Gwe, his father, and Lim Shee, his mother, in California, where he and his parents lived for many years. As long ago as 1903, the parents appeared before the immigration officials at San Francisco and testified in detail with respect to

their relationship to each other and with regard to their family. At the hearing they claimed a modest family, stating that they were the parents of two boys and one girl, and one boy mentioned by them is identified now as the present applicant. The appellant's brother, whose status as a citizen has been repeatedly recognized by the immigration officials, was the other.

In July, 1930, the appellant wished to leave the United States to visit China. Accordingly, he applied at the Minneapolis office for a citizen's return certificate. The appellant's brother, Wong Mon Fay, appeared for the appellant. His testimony was direct, conclusive and convincing that the appellant was his brother, and, together with the unimpeached testimony of the appellant and favorable evidence found in the prior records, conclusively establishes the status of the appellant as a citizen. The other child, a girl, died in this country in the year of 1917, leaving only the appellant and his brother surviving.

After the hearing had before the immigration officials at Minneapolis, the matter was referred to the Secretary of Labor, and then referred back for a further investigation, to be conducted at Minneapolis to determine the ability of the appellant to

speak English. A further hearing was had on December 3, 1930, and the records were again forwarded to the Department. In the meantime, the appellant having been given a certificate number form 430, presumed that he had a return certificate and left for China. It developed later, however, that form 430 had come into the possession of the appellant through the immigration authorities, and that for some reason unknown to both the appellant and the immigration authorities the form was marked "disapproved," and should not have come into his possession except it had been approved. But he, believing that it was the certificate for which he had made application, proceeded to leave the country, and nothing further was heard from him until March, 1934, when the Seattle immigration office was notified that the appellant was then in China and would apply for admission to the United States at the Port of Seattle.

He arrived on the Steamship President, May 29, 1934, and immediately presented form number 430, believing it was his return certificate. Thereafter a Board of Special Inquiry at Seattle entered a "not satisfied" motion, the issue, of course, whether or not the subject had established birth in the United States. At this hearing direct and uncontroverted evidence was placed before the officials, which estab-

lished appellant's citizenship. There was no evidence whatsoever that would contradict appellant's testimony to the effect that he was a citizen. However, notwithstanding this fact, the Board refused the appellant admission.

In view of the evidence introduced at this hearing, and the manner in which the hearing was conducted, and the manifest unfairness of the Board in disregarding certain substantial testimony without cause or reason, particulars of which will be more fully set out in the argument of this brief, the appellant was denied his birthright, which entitles him to appeal from this finding.

Accordingly, he appealed to the Secretary of Labor, who, upon the recommendation made by the Board of Special Inquiry, sustained the finding, thus entitling the appellant to resort to the courts to establish his citizenship. Accordingly, on the 24th day of September, 1934, a hearing was made before the Honorable John C. Bowen, United States District Court for the Western District of Washington, Northern Division, upon the appellant's writ of habeas corpus, directed to the appellee, in whose custody the appellant was then held, pending deportation in accordance with the finding of the Board.

The appellant comes before this court upon the assignment of error that the District Court erred in holding and deciding that the writ of habeas corpus should be denied to the appellant, and denying him admission to the United States as a citizen thereof.

ARGUMENT

It is a well established rule of law that a person who makes a claim of United States citizenship, and which claim is not frivolous, is entitled to a judicial determination of his status.

Fung Ho. v. White, 259 U. S. 276.

In considering the assignment of errors of the appellant, it will be necessary to consider the more detailed facts, together with the law, according to the numerous acts of the Board of Special Inquiry, which show that the hearing was conducted in a manifestly unfair manner.

All of the Evidence Shows That the Appellant Was a Citizen

In pointing out the substantial evidence which supports the appellant's contention that he is a citizen, let us first consider the testimony of the appellant himself:

Referring now to Exhibit No. 7030/428, the appellant was asked the following questions:

"Q. When and where were you born?

A. 16½ Waverly Place, San Francisco, KS 25/10-9 (Nov. 11, 1899).

. . . .

Q. Can you identify these two photographs? (Exhibiting photos attached to identification affidavit of Lim Shee and Wong Hung Gwe, March 30, 1905, signed before Notary Public Thomas S. Burnes, San Francisco, San Francisco file 21285/2-2, Wong Toy).

A. My father and my mother."

Further substantial testimony which substantiates the appellant's contention that he is a citizen is to be found in the testimony of his brother, Wong Mon Fay, Exhibit No. MPLS. No. 20746:

"Q. Where were you born?

A. In San Francisco, Calif.

Q. At what address in San Francisco were you born?

A. 16½ Waverly Place, San Francisco.

. . . .

Q. I show you Seattle file No. 7030/428 and will ask you if you can identify any of the photographs therein?

A. (Identified photograph attached to Form 430 as that of Wong Ying Wing).

Q. Is this photograph whom you have identified as Wong Ying Wing, the same person that you claim as your brother?

A. Yes.

Q. Where is Wong Ying Wing at the present time?

A. He is at Seattle, Washington.

. . . .

Q. Where was Wong Ying Wing born?

A. He was born at the same address where I was born in San Francisco, 16½ Waverly Place."

In spite of the above and other substantial testimony, the Board of Special Inquiry denied the application of the appellant for the following reason, as shown in the statement by the Chairman:

> "I am not satisfied that Wong Ying Wing was born in the United States as claimed or that his United States citizenship is established."

And further in the memorandum of the Chairman for the information of the Secretary of Labor, he stated:

> "There is no evidence to prove that the applicant Wong Ying Wing was born in San Francisco as claimed nor is there *any evidence* to establish that he is the Wong Ying Wing mentioned by the alleged parents in 1903."

With this direct, positive and unimpeached testimony before it, the Board says that "there is no evidence." Now what does it mean, "no evidence?" There is this positive, direct, unimpeached

testimony. That surely is testimony, which has just been rejected and cut from the record, but without reason. The Chairman of the Board, for the information of the Secretary of Labor, in order that he help the Secretary arrive at a correct conclusion, states there is "no evidence." I do not see how he hopes to benefit by making such a statement. It certainly was not true. It was false and made for the purpose only of misleading the Secretary in arriving at a wrong conclusion, because the Board acted unfairly and arbitrarily in refusing to consider the direct, unimpeached testimony of the appellant and his brother and other witnesses, substantiating and corroborating said testimony. The record itself established that he is the same person mentioned by his parents in the proceedings away back in 1903.

The cases lay down the uniform rule that the testimony of Chinese witnesses is not to be disregarded, and, taking into consideration other surrounding circumstances, the testimony of a Chinese person is to be given the same weight and credibility as that of any other witness.

Kwoch Jan Fat v. White, 253 U. S. 454.

Thus the Board of Special Inquiry was manifestly in error when it disregarded and ignored the

clear and uncontroverted testimony establishing the fact that the appellant was a citizen of the United States, and its ruling is subject to being set aside.

In reviewing the substantial evidence, it should also be borne in mind that, although the Board refused to consider the substantive testimony which establishes the appellant's citizenship, there was absolutely no testimony or evidence introduced to show that appellant was not a citizen. Further, there were no discrepancies or variations in the testimony establishing the citizenship of the appellant. There is no contention in this case that the testimony was manufactured or fabricated. The prior records, and particularly the unquestionable, truthful testimony of the parents as given in 1903, are entirely favorable to the cause of the appellant. The direct and convincing testimony of the appellant and his brother in 1930, and now, is also highly favorable to the cause of the appellant. In addition to the testimonial and record evidence, a most important and conclusive fact is found in the fact that appellant speaks English clearly and well. He was given a test on this particular point in 1930, and made it satisfactorily. The reports then made indicate that appellant showed a good ability to speak and understand the English language. His ability in this respect was made the subject of a special test in 1930,

having been referred by the Secretary of Labor for the purpose only of ascertaining whether or not the appellant spoke and understood English. It appears to me to be an outstanding favorable point.

Resemblance in connection with such an issue as the present one is also important. I am hopeful that the Court will make a careful comparison of the photographs of the members of this family, and particularly that it will compare the photographs of the appellant with the pictures on file of his father and mother and his brother, Wong Moon Fay. I think it will be found that there is a very good resemblance between the applicant and Wong Moon Fay, and a particularly good resemblance, if not a striking one, between the applicant and his father and mother. This resemblance is direct and convincing evidence of relationship between the applicant and his parents and his brother, Wong Moon Fay.

Further evidence favorable to the cause of the applicant is found in the fact that he was able promptly and convincingly to identify record photographs of his father and mother, as well as of his brother, Wong Moon Fay, and of a couple of children of the latter who have been admitted to the United States. Wong Moon Fay, on his part,

promptly and convincingly identified and claimed the applicant.

It is apparent that the appellant, who is a citizen and who was a resident of this country up to 1930, was under some misapprehension as to the decision of the Department. In some manner, which is unexplained by the record, triplicate form number 430, endorsed unfavorably, was delivered to the appellant. He evidently construed this document as attesting his status, and left the United States under the impression that his citizenship had been conceded and that he would be admitted upon return. The only matter that the Department had the appellant's application referred back for was the question of the ability of the appellant to speak the English language. This test he had met, and met well. Of course, it is impossible to tell just where the responsibility for this error lies, but it seems reasonably clear that it does not lie with the applicant, because when he returns to this country the appellant himself presents the certificate number 430, unfavorably endorsed, as evidence of his right to entry to the country. Now, if he had not believed that the document which was given to him, which should never have left the files of the Department, was the document for which he had made application, he would neither have gone to China nor upon

his return have presented evidence which was unfavorable to him. Here it should be borne in mind that as long as the appellant remained here, steps looking to his removal, if the government felt him to be illegally here, could only be taken judicially. In other words, when he lived here, he was entitled to a judicial determination of the question of his citizenship, and I do not believe that he has lost that right by his departure and return.

The United States Supreme Court held in *Ng Fung Ho. v. White,* 259 U. S. 276, that a person who makes a claim of United States citizenship, which claim is not frivolous, is entitled to a judicial determination of his status. Obviously, the claim of citizenship made by this appellant is not frivolous in any respect. It is made in good faith and supported by ample evidence. In consideration of this issue the court should bear in mind the *dicta* of the Supreme Court in *Kwock Jan Fat v. White,* 253 U. S. 454, that it is better that many persons be admitted erroneously than that one United States citizen should be denied his birthright.

In 1930 and in the present proceeding, the appellant and his brother, Wong Moon Fay, were closely and painstakingly questioned. Each of them testified straightforwardly and convincingly, and I

believe that their sworn and unimpeached statements are entitled to full credit and belief. Be it noted here that the officers who examined the brother at Minneapolis, have stated directly that his demeanor throughout the proceedings was good. The applicant also maintained a good demeanor throughout the proceeding in 1930, and also in connection with the present application. No criticism in this respect has been made, and a review of the testimony would seem to show beyond any reasonable doubt that he at all times has testified truthfully and convincingly, to the best of his knowledge, belief and recollection. However, an examination of the record of the Department of Labor will show that the immigration officials deliberately set out to decide adversely to the appellant, in spite of the testimony and the record. This practice of the immigration officials is so prevalent and well known that this court has actually taken judicial notice of the practice.

In the case of *Gung You vs. Nagle, Commissioner of Immigration,* 34 Federal 2nd, 848, the petitioner claimed citizenship as a son of a Chinese citizen. A hearing was had before the Board of Special Inquiry, at which time the only evidence bearing upon the question of the petitioner's citizenship was that offered by the

petitioner and certain of his relatives, which substantially supported the petitioner's claim to citizenship. However, by reason of the fact that a photograph was introduced upon which the petitioner and his brother appeared, and it was discovered that the photograph was a composite photograph, and was not the result of the pictures of the faces of the two Chinese being taken simultaneously, and by reason of certain minor discrepancies as to collateral facts, the Board of Special Inquiry disregarded all of the evidence which substantiated the petitioner's claims. For this reason, this court reversed the order of the lower court, denying the writ of habeas corpus. The court said:

> "The courts are powerless to interfere with conclusions of immigration authorities, and can only deal with cases where the principles of justice have been fraudulently outraged in the refusal to hear competent witnesses and competent testimony available, which is a denial of the due process of law, as we held in a recent case, refusing to permit the taking of a deposition in such cases. Youg Bark You vs. United States, 33 Federal 2nd, 236.
>
> The *mere hearing* of witnesses by an officer is of no avail to a party if the evidence of competent witnesses is to be entirely disregarded and findings made in the teeth of testimony of one or a dozen such witnesses because of a fixed policy to give weight to a presumption of law far beyond the legislative intent, or because of a policy calculated to entrap the witnesses into statements inconsistent with his own or other witnesses's statements, and then to base an order of exclusion or deportation

upon such variances or discrepancies as are reasonably to be expected in all human testimony where, due to a lack of memory, to temporary forgetfulness, to lack of observation, or to inattention to questions or to a failure to fully appreciate their force and significance. When this policy is accompanied by a separate examination of witnesses without a previous knowledge of the subject of interrogation, it is certain that discrepancies will be developed as the minutia of details leave. If such unavoidable and inevitable variances are accepted arbitrarily to justify a rejection of direct testimony of witnesses, and to justify an order of exclusion, the apparent fairness of the proceedings merely gives a judicial color to obvious and premeditated injustice. *The records of the cases which have been before the courts, either in this or other Circuits, indicate a fixed policy of the Department of Labor to minutely examine and cross-examine the applicant and his witnesses, and to base an order of exclusion of the applicant upon contradictions developed between the applicant's own witnesses,* without seeking for confirmation or contradiction from other witnesses, except as their testimony is recorded in the files of the Department of Labor." (Italics ours)

This practice has become so prevalent that the immigration officials ignore all evidence and all records, and even where there are no discrepancies, pre-judge the issue by an order of exclusion of the immigrant.

The court in this case had to take one of two courses:

1. Refuse to interfere with the conclusion of the administrative officials, even though it is manifest that

all of the evidence shows that the appellant is a citizen, and that the only basis upon which the administrative officers' ruling can be predicated is the fact that they disregarded the substantial testimony showing that the applicant was a citizen, without any testimony contradictory, and merely because, as the Chairman of the Board of Special Inquiry expresses it, that "I am not satisfied that the appellant was born in the United States."

2. Interfere with and set aside the conclusion of the administrative board when it is shown that the clear, cogent and convincing proof, and the record, establish the citizenship of the appellant, and the conduct of the administrative board is manifestly unfair, in that they disregard the unimpeached testimony of the record, establishing said citizenship.

The court in the case of *Youg Bark You vs. United States, supra,* took the latter course, and said:

> "It is plain and has frequently been said that the immigration authorities are not bound by the strict rules of evidence nor determinations of proceedings. Discrepancies as to numbers of windows in the appellant's home is relevant and material to the question as to whether or not the applicant lived in the family and thus to the fact of relationship, but in the absence of conclusive evidence as to the actual fact, discrepancies are not damaging. As a basis of judging the credibility of a witness, if we have knowledge of the fact, we can weigh the value of the evidence at variance with the fact

and thus arrive at the credibility of a witness. Evidence concerning the town or village of the home is adopted to develop the question as to whether or not the applicant lived in the village and thus in the home from which he claims to come, but discrepancies here must be of the most unsatisfactory kind upon which to base a finding of the credibility of a witness, and when the cross-examiners of the Board of Special Inquiry know nothing of the actual facts concerning the village, the result is even more unsatisfactory and unconclusive.

It would seem then that the discrepancy in the testimony of a witness to justify a refusal must be on some fact logically related to the matter of relationship, and of such a nature that the error of discrepancy can not be reasonably described to ignorance or forgetfulness and must reasonably indicate a lack of veracity. The difficulty in these cases with a "discrepancy" is that there is no standard of comparison. *The immigration authorities know nothing of the actual facts, but match witness against witness* and thus develop inconsistencies, supporting one witness's testimony that the applicant is a son of an American citizen, but entirely disagreeing as to some fact concerning the village from which they claim to come. If both are shown to be wrong in some important and noteworthy feature, it might justify the rejection of the testimony of both. *But in the absence of other and affirmative evidence as to the actual fact, how can the testimony of both be rejected? Can we as a matter of common sense reject one because the other has told the truth, and then reject the other also? This seems entirely unreasonable."* (Italics ours)

I must point out that the quizzing of the immigration authorities in the case now before the court did not

throw even the slightest shadow upon the question of veracity. The fact in the present case is that the immigrant, through no fault of his, received a blank to which he was not entitled, and presumed that this was the blank for which he had made application, and so proceeded to China, and upon his return produced the form, where it developed that the same was marked upon its face "disapproved," and therefore the Board closes its ears to the record and the evidence, and denies the appellant his birthright.

PETTY DISCREPANCIES UPON WHICH THE ADMINISTRATIVE BOARD DISREGARDED THE SUBSTANTIAL UNIMPEACHED TESTIMONY:

By reference to the record of the Department of Labor, and by more particular reference to the memorandum of the Chairman of the Board of Special Inquiry for the information of the Secretary of Labor, Exhibit 7030/428, Paragraph 5, we find that great stress is laid upon the fact that the mother and father of the appellant in the year 1906 attempted to claim some fictitious children. This, however, it should be pointed out, was three years after they had already itemized their family to be but three children, and at that time the appellant was included as one of the family. Quoting:

> "It will be noted that the alleged parents claimed only two sons and one daughter when testifying in behalf of Wong Mon Fay in San Fran-

> cisco in 1903, . . . only three years later, they claimed to have seven children. . . . Wong Wing, as described in 1906, would, therefore, be 44 years old at the present time."

It should not require the citation of authorities to convince this court that the appellant should not be denied his rights as a citizen merely because his mother, after identifying him as her son in 1903, subsequently in 1906 attempted to claim certain fictitious children. To do so would be to penalize the appellant for the attempted perjury of his parents.

In the case of *U. S. ex rel. Leong Jun vs. Day, Commissioner of Immigration et al.,* 42 Federal 2nd, 714, in the New York District Court, practically the same set of facts was presented. This case is so well considered and so much in point as to justify a quotation in toto:

> "Leong Jun, a Chinese lad, 20 years of age, has been denied admission to the United States.
>
> At the hearing accorded the applicant for admission in October, 1928, the father, who was born in the United States, testified that he was married and that the applicant is his son. In 1923 when he returned from China, he testified he was not married and that he did not have a marriage name. He now states that he so testified in 1923 because he was "scared."
>
> This is the only substantial discrepancy that appears in the record of the hearings, to which the father and son were subjected separately.

(1) *The fact that the father testified falsely in* 1923 *evidence can not deprive the applicant of his right to admission as the son of an American citizen.* See ex parte Ng Ben Fong, 20 Federal 2nd, 1040.

(2) There is such a substantial agreement in the testimony of the father and son as to all things important, and many unimportant facts, that no inference adverse to the credibility of either can be drawn from the few immaterial discrepancies in their testimony, referred as to "major discrepancies" by the Board of Special Inquiry. The Board regards as major discrepancies contradictory testimony as to whether the grandparents of the appellant are buried in the same or separate graves, whether he was born in April or May, 1909, whether the school in the home village consisted of one large room or one large and two small rooms, whether land owned by the father is located 54 jungs from the home village, and whether up to February, 1923, six years ago, his parents occupied a room with their two younger children or with only the youngest child and the applicant and the other child the sleeping or sitting room.

As a major discrepancy the Board also alludes to the fact that the father of the applicant testified that his father, up to the date of his death, about 33 years ago, was in business in Chung Hong market, but that he did not know what kind of business; that he was then about 21 years old and that he never was in that market, and that a witness testified in 1923 that he saw the father regularly in the market for 10 years, and that the applicant, who was not born until after the grandfather's death, testified he never heard of the market.

This testimony the Board states, clearly shows that the father on April 9, 1923, acknowledged

that he was never married and therefore can not have a wife and four children as he claims.

There were no discrepancies, but substantial agreement as to the names and ages of the brothers of the applicant, the names and ages of their wives, and their children, the description of the village from which they came, the names and ages of the inhabitants, the name of the school teacher, the time of the day when the father left the home village for America, and the room in which he said good-bye to his family, and as to which of his sons accompanied him to the station.

Their testimony could not have been in such accord as to so many details unless the claimed relationship did exist. It seems to me that the finding that it was not established can not be maintained with any sense of fairness to the applicant. U. S. ex rel. Leon Ding v. Brough, C. C. A. 22 Federal 2nd, 926. U. S ex. rel. Fong Lung Sing vs. Day, 29 Federal 2nd, 619. The writ, therefore, must be sustained."

The same general principle has been adopted by this court in the case of *Wong Tsich Wge et al. vs. Nagle,* reported in 33 Federal 2nd, 226, Circuit Court of Appeals for the Ninth Circuit, 1929, where it adopted the language of *Go Lun vs. Nagle,* 22 Federal 2nd, 246:

"We will say at the outset that discrepancies in testimony, even as to collateral and immaterial matters, will be such as to raise a doubt as to the credibility of the witnesses and warrant exclusion; but this cannot be said of every discrepancy that may arise. We do not all observe the same things or recall them in the same way, and *an American citizen can not be excluded, or denied the right of*

> *entry, because of immaterial and unimportant discrepancies in testimony* covering a multitude of subjects. *The purpose of the hearing is to inquire into the citizenship of the applicant and not to develop discrepancies which may support an order of exclusion, regardless of the question of citizenship."* (Italics ours)

In this case the court also referred to the case of *Nagle vs. Dong Ming,* 26 Federal 2nd, 436, wherein that court said:

> "But it must be borne in mind that mere discrepancies do not necessarily discredit testimony. It is sometimes urged upon us that the testimony is impeached by discrepancies and sometimes by its complete accord. Both propositions are valid. But to be so, and to escape the charge of inconsistency, they must be understood in the light of reason upon which they rest and applied only within the language of such reason. Otherwise all testimony would be self-impeaching."

This court further referred to the case of *Maron ex rel. Le Wong You vs. Tillinghost,* C. C. A. 27 Federal 2nd, 580, quoting:

> ". . . we assume that these tribunals are not bound by the rules of evidence applicable in a jury trial. But they are bound by the rules of reason and logic—by what is commonly referred to as common sense."

Other minor discrepancies upon which the Board of Special Inquiry placed emphasis and upon which they manifestly disregarded the uncontroverted testimony, were in the testimony of the appellant and certain Chi-

nese living in Pittsburgh as to the appellant's residence there. In Exhibit 3834/14, we find the following testimony of one Yee Haim, the manager of the Quong Wah Hai Company in Pittsburgh:

"Q. I show you at this time a photograph and ask you if you can identify it? (Witness shown photograph of Wong Ying Wing contained on Inspection Card, U. S. Public Health Service, bearing Seattle No. 7030/428).

A. This picture is familiar to me as I have seen him in Pittsburgh but I cannot recall who he is.

Q. Are you positive that you saw him in Pittsburgh?

A. I saw him for about a year, 8 or 9 years ago.

Q. How long was he in Pittsburgh if you can remember?

A. I mean about 8 or 9 years ago I saw him here for about a period of two years before he left here."

In the same Exhibit, the testimony of another Chinese, Wong Yuk Sing, shows:

"Q. I show you a photograph and ask you if you can identify same? (Witness shown photograph of Wong Ying Wing contained on Inspection Card, U. S. Public Health Service, bearing Seattle No. 7030/428.)

A. I know him.

Q. What is his name?

A. I know him but I cannot tell you his name.

Q. Where did you first meet this man?

A. In this store and also around Second Ave.

Q. Do you know how long he lived in Pittsburgh?

A. No, I don't.

Q. Has he any relatives in Pittsburgh?

A. I don't know. I just know him by face.

Q. Did he have an occupation while he was in Pittsburgh?

A. He was a laundryman around Pittsburgh but I cannot tell you where."

This testimony has no material bearing upon the question of the appellant's citizenship, but is referred to merely for the reason that the Board of Special Inquiry made great point of the fact that no record of Wong Ying Wing's registry in Pittsburgh under the draft law could be found through the War Department to discredit his testimony he resided there. However, it is submitted that any errors or discrepancies in the record of the War Department should not be laid at the feet of the appellant, especially when several well known Chinese witnesses in Pittsburgh testified to the fact that Wong Ying Wing was a resident of Pittsburgh during the times he stated in his testimony. In view of the record, there can be no controversy as to the fact that the Board of Special Inquiry entirely disregarded substantial evidence, due to these petty discrepancies as to collateral

facts. The report of the Chairman of the Board itself shows that the only testimony having any bearing upon the question of the appellant's citizenship was unfairly and, due to the misconduct of the members of the Board of Special Inquiry, arbitrarily disregarded.

Referring again to the report of the Chairman of the Board for the information of the Secretary of Labor, Exhibit 7030/428, we find the following statement:

> "There is no evidence to prove that the applicant Wong Ying Wing was born in San Francisco as claimed, nor is there any evidence to establish that he is the Wong Ying Wing mentioned by the alleged parents in 1903 or the Wong Ying Wing mentioned by the same persons in 1906. It is, therefore, *not believed* that Wong Ying Wing has established his claimed birth in the United States." (Italics ours)

The case presented here is identical with the one of *Flin ex rel. Chin King v. Tillingast,* 32 Federal 2nd, 359, District Court of Mass., 1929. The Board of Special Inquiry, following its usual tactics of attempting by third degree methods to bring out minor discrepancies in the testimony of the witnesses, rather than attempting to determine the question before it of the citizenship of the applicant, entirely disregarded the only evidence having any bearing upon the question of citizenship, because of these discrepancies. The court held that the minor discrepancies were insufficient to overcome positive testimony. The court, in rendering its

opinion, criticized the practice of immigration tribunals. Quoting from this case:

> "It is not the function of the courts to reweigh evidence in these cases, but it is their duty to say whether a reasonable mind could regard direct affirmative evidence in a person's favor as offset by circumstances or mere suspicion. In this case the immigration tribunal seemed to have allowed their prejudice against the father, because of what they regarded as a previous attempt to deceive them, to blind them as to the overwhelming evidence that Wing had a son corresponding to the applicant. With this fact established, there remains only the question of whether there were reasonable grounds on which to review the evidence that the petitioner had a son. The petitioner, Wing, and the two Chinese witnesses testified directly and positively that such is the fact. Kwang's testimony, while not amounting to direct evidence of identity, certainly goes far to establish it. *Against this there is no direct evidence and there are no facts from which in my opinion such a conclusion can reasonably be reached.* It is settled that Chinese witnesses are not to be disregarded and ignored simply because of their race."

I feel that the appellant has made a most satisfactory showing, in the face of difficult conditions, and I believe the evidence fully and fairly establishes his birth in the country beyond a reasonable doubt, and I therefore respectfully move that the appeal be sustained and that the writ of habeas corpus issue.

Respectfully submitted,

EDWARD H. CHAVELLE,
Attorney for Appellant.